

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
ETOYS, INC., <u>et al.</u> ,)	Bankruptcy Case Nos. 01-0706
)	Through 01-0709 (MFW)
Debtors.)	
_____)	
ROBERT K. ALBER, <u>Pro Se</u> ,)	
)	
Appellant,)	
)	
v.)	Civil Action No. 05-_____
)	
TRAUB, BONACQUIST & FOX, LLP,)	
BARRY GOLD, MORRIS NICHOLS)	
ARSHT & TUNNELL, AND POST-)	
EFFECTIVE DATE COMMITTEE OF)	
EBC I, INC.,)	
)	
Appellees.)	
_____)	Re: D.I. 2332

**APPELLEE/CONDITIONAL CROSS-APPELLANT'S
COUNTER-DESIGNATION OF THE RECORD TO BE INCLUDED
IN APPEAL BY ROBERT K. ALBER, PRO SE APPELLANT**

Appellee/Conditional Cross-Appellant Morris Nichols Arsht & Tunnell ("Appellee" or "Morris Nichols"), pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), hereby submits the following items to be included in the Record on Appeal herein, in addition to those items designated by Appellant, Robert K. Alber, *Pro Se*,¹ in connection with Appellant's appeal of the October 4, 2005 Order (the "October 4

¹ In its Designation of the Record on Appeal, Appellant has failed to identify documents by their correct titles or by official docket number. As a result, Appellee is unable to determine precisely what documents Appellant is referring to in its Designation of the Record. Accordingly, in this Counter-Designation, Appellee herein designates all those items that they believe should be included in the Record on Appeal. In doing so, (continued . . .)

Order”) of the United States Bankruptcy Court, District of Delaware (Walrath, C.J. presiding) (the “Court”), *inter alia*, (i) denying in part and granting in part the emergency motion filed by Robert K. Alber (the “Emergency Motion”), (ii) approving settlement agreement between TB&F and the Office of the United States Trustee (“UST Settlement Motion”), and (iii) approving the settlement between the Post Effective Date Committee and Goldman Sachs & Co., Inc., for and upon the reasons set forth in its Opinion, dated October 4, 2005 and Morris Nichols’ conditional cross-appeal² from the Opinion dated October 4, 2005 (D.I. 2319) and the October 4 Order (collectively the “Opinion and Order”), in so much as the Opinion and Order concluded that (a) the exculpatory provisions of the Revised First Amended Consolidated Liquidating Plan Of Reorganization of EBC I, Inc. f/k/a eToys, Inc. And Its Affiliated Debtors And Debtors-In-Possession (D.I. 1142) and the Findings of Fact, Conclusions of Law and Order Confirming First Amended Consolidated Liquidating Plan of Reorganization of EBC I, Inc. f/k/a EToys, Inc., and Its Affiliated Debtors and Debtors-in-Possession, dated November 1, 2002 (D.I.1385), did not preclude the relief requested by the Purported Appellants and (b) the relief requested by the Purported Appellants was not time barred under Rule 9024 of the Federal Rules of Bankruptcy Procedure and Rule 60(b) of the Federal Rules of Civil Procedure.

(. . . continued)

Appellee has included within the designated record all pleadings filed by Appellant that were not otherwise stricken by the Bankruptcy Court. In addition, Appellant has designated numerous items that were not part of the record below, and are inappropriate for inclusion in the Record on Appeal. Consequently, Appellee reserves the right to seek an order striking certain items from Appellant’s designation.

² Morris Nichols is separately filing a statement of the issues on appeal as Cross-Appellant.

COUNTER-DESIGNATION OF RECORD ON APPEAL

Tab No.	Date Filed	Docket No.	Description of Pleading
1.	4/5/2001	133	Application of Debtors and Debtors-in-Possession to Employ and Retain Morris, Nichols, Arsht & Tunnell as Attorneys for the Debtors and Debtors-in-Possession.
2.	4/25/01	252	Order Approving Retention of Morris, Nichols, Arsht & Tunnell as Attorneys for Debtors and Debtors-in-Possession.
3.	6/4/2001	408	GE Capital Corporation's Notice of Appearance and Request for Service of Notices and Documents.
4.	6/20/2001	459	Motion by GE Capital Corporation for Order to Compel Assumption or Rejection of an Unexpired Lease or Shortening the Time in Which the Lease Shall be Assumed or Rejected.
5.	7/6/2001	509	Notice of Withdrawal of Motion for Order of GE Capital Corporation to Compel Assumption or Rejection of an Unexpired Lease or Shortening the Time in Which the Lease Shall be Assumed or Rejected.
6.	9/26/2001	689	Motion of Debtors and Debtors in Possession for an Order Authorizing and Appointing the Official Committee of Unsecured Creditors to Investigate, Commence and Prosecute Turnover and Preference Avoidance Actions Against Goldman, Sachs & Co.
7.	10/3/2001	705	Motion of Debtors and Debtors in Possession Pursuant to Bankruptcy Rule 9019 for an Order Approving Settlement Between Debtors and Debtors in Possession and Goldman, Sachs & Co.

Tab No.	Date Filed	Docket No.	Description of Pleading
8.	10/12/2001	728	Stipulation and Agreed Order Authorizing and Appointing the Official Committee of Unsecured Creditors to Investigate, Commence and Prosecute Turnover and Preference Avoidance Actions against Goldman, Sachs & Co.
9.	11/9/2001	767	Motion by GE Capital Corp. for Order Compelling Payment of Administrative Expense Claim.
10.	11/29/2001	801	Debtors' Objections To Motion By GE Capital Corporation For Order Compelling Payment Of Administrative Claim.
11.	1/24/2002	868	Certification of Counsel Re: Stipulation and Proposed Order between Debtors and Debtors in Possession and GE Capital Corporation Relating to Compromise of Claims Under Lease.
12.	1/28/2002	873	Order Approving Stipulation Between Debtors and Debtors in Possession and GE Capital Corporation Relating to Compromise of Claims Under Lease.
13.	7/29/2002	1118	Letter from Robert K. Alber Objecting to Plan of Reorganization.
14.	7/29/2002	1119	Letter from Robert K. Alber Regarding Creditors List for Plan of Reorganization.
15.	10/21/2002	1341	Motion of Robert K. Alber to File Documents Related to Confirmation Order under Seal.
16.	10/28/2002	1367	Notice of Robert K. Alber for Withdrawal of Docket Items 1341 and 1342.
17.	10/29/2002	1368	Motion of Robert K. Alber for Discovery.
18.	10/29/2002	1369	Motion of Robert K. Alber for Sanctions.

Tab No.	Date Filed	Docket No.	Description of Pleading
19.	10/29/2002	1370	Motion of Robert K. Alber for Sanctions.
20.	10/30/2002	1371	Motion of Robert K. Alber for Discovery Regarding Debtors' Shareholder List.
21.	10/30/2002	1372	Motion of Robert K. Alber for Discovery Regarding the Tapes and/or Transcripts of the October 16th, 2002 Hearing.
22.	10/30/2002	1373	Objection of Robert K. Alber to the Plan and Confirmation Statement.
23.	10/31/2002	1381	Motion of Robert K. Alber for Hold and Abatement.
24.	10/31/2002	1382	Motion of Robert K. Alber to Allow EBC 1, Inc. f/k/a eToys, to be Assigned to the Etoys Shareholders Group.
25.	11/4/2002	1384	Order Denying Motions of Shareholder Robert K. Alber Regarding Confirmation of the First Amended Consolidated Liquidating Plan.
26.	11/1/2002	1385	Findings of Fact, Conclusions of Law and Order Confirming First Amended Consolidated Liquidating Plan of Reorganization of EBC I, Inc. f/k/a EToys, Inc., and Its Affiliated Debtors and Debtors-in-Possession.
27.	11/4/2002	1394	Transcript of October 16, 2002, Hearing Regarding Plan Confirmation.
28.	11/8/2002	1437	Letter of Robert K. Alber Regarding Apology to the Court and Gregory Werkheiser.

Tab No.	Date Filed	Docket No.	Description of Pleading
29.	12/20/2002	1488	Fifteenth Interim (For the Period of November 1, 2002) and Final Application of Morris, Nichols, Arsht & Tunnell, As Attorneys for Debtors and Debtors-In-Possession, For Allowance of Interim Compensation and For Reimbursement of All Actual and Necessary Expenses Incurred.
30.	2/27/2003	1772	Final Order Awarding Final Allowance of Compensation for Services Rendered and Reimbursement of Expenses.
N/A	11/24/04	2128 ³	Motion for Order Approving Settlement With Goldman, Sachs & Co.
N/A	12/14/2004	2141	Objection by Collateral Logistics, Inc. to PEDC Motion to Settle With Goldman Sachs & Co. and Request for Court Action of Sanctions and Removal per Rule Due to Failure to Disclose and Possible Fraud.
N/A	12/15/2004	2138	Objection by Robert K. Alber to the Proposed Goldman Sachs & Co. Settlement.
N/A	12/15/2004	2139	Certification of No Objection of PEDC to Motion for Order Approving Settlement with Goldman Sachs & Co. (WITHDRAWN)

³ Because copies of this designated document, and all of the following designated documents, have been provided by Appellees Traub Bonacquist & Fox LLP and Barry Gold to the Clerk of the Court, Morris Nichols has not submitted additional copies of these designated documents. Should the Clerk want additional copies of these designated documents, Morris Nichols will provide them upon request.

Tab No.	Date Filed	Docket No.	Description of Pleading
N/A	12/15/2004	2143	Notice of Withdrawal filed by PEDC to Certification of No Objection of PEDC Motion for Order Approving Settlement with Goldman Sachs & Co.
N/A	12/20/2004	2145	(Emergency) Motion filed by Robert K. Alber to Allow an Official Investigation, Request that Sanctions, Disgorgement of Fees and Immediate Removal of Barry Gold, Paul Traub, Michael Fox and Traub, Bonacquist & Fox LLP, Among Others be Effected Immediately
N/A	12/22/2004	2146	(Emergency) Motion of Collateral Logistics, Inc. to Allow Facts in Evidence, to Disqualify Traub, Bonacquist & Fox as Council for Creditors Committee and Request to Remove Barry Gold
N/A	1/4/05	2152	Transcript of Hearing Held on December 22, 2004 Before the Honorable Mary F. Walrath
N/A	1/25/2005	2169	Barry Gold's Response to Emergency Motions filed by Robert K. Alber and COLLATERAL LOGISTICS, INC.
N/A	1/25/2005	2170	PEDC's Response in Opposition to Emergency Motions filed by COLLATERAL LOGISTICS, INC. and Robert K. Alber
N/A	1/25/2005	2171	Objection by Traub, Bonacquist & Fox LLP to Motions Seeking, <i>Inter Alia</i> , Sanctions, Disgorgement of Fees, and Immediate Removal of Traub, Bonacquist & Fox LLP filed by Robert K. Alber and Collateral Logistics, Inc.

Tab No.	Date Filed	Docket No.	Description of Pleading
N/A	1/25/2005	2173	Omnibus Response and Objection of EBC I, Inc., f/k/a eToys, Inc. Reorganized Debtor, to: (I) Objection of Robert K. Alber, on Behalf of Himself and Purported eToys Shareholders Group, to Motion for Order Approving Settlement with Goldman, Sachs & Co.; (II) Objection by Collateral Logistics, Inc. to PEDC Motion to Settle with Goldman Sachs and Request for Court Action of Sanctions and Removal all per Rule Due to Failure to Disclose and Possible Fraud; (III) Motion of Robert K. Alber, on Behalf of Himself and Purported eToys Shareholders Group, for Various Relief; and (IV) Motion of Collateral Logistics, Inc. for Various Relief
N/A	1/25/2005	2178	Motion of Robert K. Alber to Allow an Official Investigation by Initiated by the Court, the US Trustee Office, and/or the SEC into Violations of Code (a) and Rule 2014, and others, and Request that Sanctions, Disgorgement of Fees and the Immediate Removal of Debtors Counsel as Represented by Robert Dehney, Michael Busenkell, Gregory Werkheiser and Morris, Nichols, Arsht & Tunnell (MNAT), Among Others, be Effected Immediately
N/A	2/8/05	2191	Transcript of Hearing Held on February 1, 2005 Before the Honorable Mary F. Walrath
N/A	2/9/2005	2189	Scheduling Order (w/Revisions) re: Motions and MNAT Disqualification Motion

Tab No.	Date Filed	Docket No.	Description of Pleading
N/A	2/11/2005	2193	Objection of Morris, Nichols, Arsht & Tunnell to Motion of Robert K. Alber for Disqualification of Morris, Nichols, Arsht & Tunnell as Counsel to Reorganized Debtor, Disgorgement of Compensation and Other Relief
N/A	2/11/2005	2194	Response to and Reaffirmation of Emergency Requests Concerning Criminal and Civil Acts by Multiple Parties in the eToys Collective Cases, filed by Collateral Logistics, Inc.
N/A	2/15/2005	2195	United States Trustee's Motion for Entry of an Order Directing Disgorgement of Fees to be Paid to Traub, Bonacquist & Fox (TBF) for Services Rendered as Counsel to the Official Committee of Unsecured Creditors
N/A	2/24/2005	2201	United States Trustee's Motion to Approve Settlement of Motion for Order Directing Disgorgement of Fees Paid to Traub Bonacquist & Fox LLP for Services Rendered as Counsel to Official Committee of Unsecured Creditors
N/A	2/24/2005	2202	United States Trustee's Motion to Shorten Time, to Limit Notice and to Approve Form and Manner of Notice in Connection with Motion to Approve Settlement of Motion for Order Directing Disgorgement of Fees Paid to Traub Bonacquist & Fox LLP for Services Rendered as Counsel to Official Committee of Unsecured Creditors
N/A	2/25/2005	2205	Emergency Motion by Traub, Bonacquist & Fox LLP to Continue Evidentiary Hearings

Tab No.	Date Filed	Docket No.	Description of Pleading
N/A	2/28/2005	2210	Order (with Revisions by the Court) Granting Traub, Bonacquist & Fox LLP's Emergency Motion to Continue Evidentiary Hearings
N/A	3/1/2005	2212	Limited Joiner and Response of Collateral Logistics, Inc. and Steve Haas to the US Trustee's Motion for Disgorgement and Earlier Statements of Disqualification of the Firm Traub, Bonacquist & Fox Along with Replacement of Barry Gold as Plan Administrator and Disqualification and Disgorgement of the Firm of Morris, Nichols Arsht & Tunnell
N/A	3/1/2005	2213	Hearing held on 3/1/2005 – Sign In Sheet
N/A	3/1/2005	2214	Response Of Steve Haas President Of Collateral Logistics, Inc. To Barry Gold's Response On January 25 th 2005 To The Motion Of Steve Haas And Collateral Logistics And The Separate Motion Of Robert K. Alber An eToys Shareholder Which Requested Emergency Actions Of The Court In The eToys Matter Due To Fraud And Failure To Disclose Along With Other Actions On December 22 nd 2004 Including Sanctions Of Disqualification Disgorgement And The Appointment Of An Examiner Or Other Measures That The Court Deem Appropriate Under The Code To Correct Matters

Tab No.	Date Filed	Docket No.	Description of Pleading
N/A	3/1/2005	2215	Response Of Steve Haas President Of Collateral Logistics, Inc. Morris Nichols Arsht & Tunnel On January 25th 2005 Along With Their Relative Response In Feb. To The Motion Of Steve Haas And Collateral Logistics And The Separate Motion Of Robert K. Alber An eToys Shareholder Which Requested Emergency Actions Of The Court In The eToys Matter Due To Fraud And Failure To Disclose Along With Other Actions On December 22, 2004 Including Sanctions Of Disqualification Disgorgement And The Appointment Of An Examiner Or Other Measures That The Court Deem Appropriate Specifically To Assure Good Faith Compliance To The Plan By Debtor Under The Code To Correct Matters Of Fraud On Disclosure
N/A	3/1/2005	2216	Response Of Steve Haas President Of Collateral Logistics, Inc. To The Offer To Compromise And/Or Settle The Traub Bonacquist & Fox Along With Barry Gold And Other Related Matters With Broad Indemnification Language Presented That Is Hereby Objected To As Being Far To Lenient
N/A	3/1/2005	2217	Affidavit of Collateral Logistics, Inc. that Collateral Logistics, Inc. is Pro Se
N/A	3/5/2005	2220	Supplemental Response of Morris, Nichols, Arsht & Tunnell to Motion of Robert K. Alber for Disqualification of Morris, Nichols, Arsht & Tunnell as Counsel to Reorganized Debtor, Disgorgement of Compensation and Other Relief

Tab No.	Date Filed	Docket No.	Description of Pleading
N/A	3/9/2005	2222	Supplemental Statement of Robert K. Alber, eToys Shareholder, Requesting the Court Impose Harsher Sanctions on Traub, Bonacquist & Fox LLP and Disqualify Barry Gold as Plan Administrator (on behalf of Robert K. Alber as well as other ETYSQ shareholders of record)
N/A	3/11/2005	2223	Certificate of Service of Robert K. Alber to Joinder Inter Alia re: the US Trustee's Motion for Disgorgement of Fees Paid to Traub, Bonacquist & Fox LLP
N/A	3/11/2005	2224	Certificate of Service of Robert K. Alber to Supplemental Statement Requesting the Court Impose Harsher Sanctions on Traub, Bonacquist & Fox LLP and Disqualify Barry Gold as Plan Administrator
N/A	3/15/2005	2225	United States Trustee's Reply to Pleadings Styled as (A) Robert K. Alber Joining Inter Alia the United States Trustee's Motion for Order Directing Disgorgement of Fees Paid to Traub, Bonacquist & Fox LLP et al for Services Rendered as Counsel to Official Committee of Unsecured Creditors with This One Week Response to the Hearing of March 1, 2005 and the New Evidence Issues (D.I. 2221) and (B) Supplemental Statement by Robert K. Alber, eToys Shareholder, Requesting the Court Impose Harsher Sanctions on Traub, Bonacquist & Fox LLP and Disqualify Barry Gold as Plan Administrator (D.I. 2222)

Tab No.	Date Filed	Docket No.	Description of Pleading
N/A	3/15/2005	2226	Response by Traub, Bonacquist & Fox LLP (A) in Support of US Trustee's Motion Seeking Approval of a Settlement with Traub, Bonacquist & Fox LLP and (B) in Opposition to (i) Supplemental Statement and Joinder in US Trustee Sanctions Motion Filed by Robert K. Alber, (ii) Limited Joinder and Response of Collateral Logistics, Inc. and Steve Haas to the US Trustee's Motion for Disgorgement and (iii) Response of Steve Haas President of Collateral Logistics, Inc. to the US Trustee's Offer to Compromise and/or Settle with Traub, Bonacquist & Fox LLP (Dockets Nos. 2145, 2146, 2201, 2202, 2211, 2216, 2221 and 2222 respectively)
N/A	3/15/2005	2227	Barry Gold's Response to Robert K. Alber's Joining of United States Trustee's Motion for Disgorgement (Docket No. 2221) and Supplement Statement (Docket No. 2222)
N/A	3/15/2005	2228	Transcript from Hearing held on March 1, 2005
N/A	3/15/2005	2229	Response of EBCI, Inc. f/k/a eToys, Inc. Reorganized Debtor, to Supplemental Statement of Robert K. Alber
N/A	3/15/2005	2231	Response by Robert K. Alber to Supplemental Response of MNAT, eToys Debtors Counsel, eToys Docket 2220, which is a Response to eToys Docket 2178, Requesting Disqualification of MNAT, Disgorgement of Compensation Paid to MNAT for Services Rendered, Sanctions, and Other Relief, for Not Disclosing the Fact that they, MNAT, Had Not Disclosed their Relationship with Goldman Sachs (GS) and General Electric (GECC)

Tab No.	Date Filed	Docket No.	Description of Pleading
N/A	3/17/2005	2232	Second Supplemental Response of Morris, Nichols, Arsht & Tunnell to Motion of Robert K. Alber for Disqualification of Morris, Nichols, Arsht & Tunnell as Counsel to Reorganized Debtor, Disgorgement of Compensation and Other Relief
N/A	10/4/2005	2319	Opinion DENYING Motion of Collateral Logistics, Inc.; GRANTING IN PART and DENYING IN PART Motions of Robert K. Alber; APPROVING Settlement Between U.S. Trustee and Traub, Bonacquist, Fox LLP; APPROVING Settlement with Goldman Sachs & Co.
N/A	10/4/2005	2320	Order DENYING Motion of Collateral Logistics, Inc.; GRANTING IN PART and DENYING IN PART Motions of Robert K. Alber; APPROVING Settlement between U.S. Trustee and Traub, Bonacquist, Fox LLP; APPROVING Settlement with Goldman Sachs & Co.
N/A	10/4/2005	2321	Certificate of Service filed by Barry Gold, as Plan Administrator for the Substantively Consolidated Chapter 11 Estates of EBCI, Inc. f/k/a eToys, Inc. et al, for the Court's October 4, 2005 Opinion and October 4, 2005 Order
N/A	10/14/2005	2326	Notice of Appeal Of The Court's Decision Entered On October 4, 2005. Appeal Number 05-70, filed by Steven Haas, President of Collateral Logistics, Inc.
N/A	10/14/2005	2327	Notice of Appeal Of The Court's Decision Entered On October 4, 2005, filed by Robert K. Alber.
N/A	11/24/05	2329	Notice of Conditional Cross-Appeal

Tab No.	Date Filed	Docket No.	Description of Pleading
			Traub, Bonacquist & Fox Exhibits
N/A		*	Two Page Documents.
N/A		*	A1- Deposition of Paul Traub
N/A		*	A2- Home Life Document
N/A		*	A3- Billing Statements
N/A		*	A4- New York Court Documents
N/A		*	A6- Secretary of State Document
N/A		*	T1- Paul Traub Declaration
N/A		*	T2- Michael Fox Declaration
N/A		*	G1- Barry Gold Declaration
N/A		*	G2- Plan Administrator Agreement
			Robert K. Alber Exhibits
N/A		*	A1- Docket 868
N/A		*	A2- Docket 873

* March 1, 2005 Hearing Exhibit.

Tab No.	Date Filed	Docket No.	Description of Pleading
N/A		*	A3- Compilation
N/A		*	A4- Transcript of December 6, 2001
N/A		*	A5- Transcript of November 19, 2001
N/A		*	A6- Billing Excerpts
N/A		*	A7- Transcript of November 1, 2001
N/A		*	A8- TB&F Billing Statements
N/A		*	Transcript of February 9, 2005 deposition of Michael G. Busenkell, Esq.
N/A		*	Transcript of February 9, 2005 deposition of Barry F. Gold
N/A		*	Transcript of February 9, 2005 deposition of Michael S. Fox, Esq.
N/A		*	Transcript of February 9, 2005 deposition of Paul Traub, Esq.
			Morris Nichols Exhibit
N/A		*	MNAT's Objection and Attachments

In accordance with Bankruptcy Rule 8006 and Local Rule 8006.1, Appellee has provided copies of the items designated herein to the Clerk of the Bankruptcy Court.

WHEREFORE, Appellee respectfully requests that the Clerk of the Bankruptcy Court transmit this Counter-Designation and the Record on Appeal to the Clerk of the United States District Court, District of Delaware.

Dated: November 3, 2005
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL



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